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Joint written statement* submitted by Lawyers for Lawyer, Lawyers Rights Watch Canada, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Viet Nam: Failure to Comply with UPR Recommendations

Introduction

1. Lawyers for Lawyers (L4L) and Lawyers' Rights Watch Canada (LRWC) jointly submit this statement on the state of human rights in Viet Nam, especially those regarding the legal profession.

2. Viet Nam underwent the Universal Periodic Review (UPR) by the United Nations Human Rights Council (HRC) on February 5th, 2014.

3. L4L, LRWC and other stakeholders reported in submissions filed with the Office of the High Commissioner of Human Rights that Viet Nam is violating its international human rights obligations including the obligation to protect and ensure freedoms of expression, association and assembly for lawyers and other human rights defenders and is subjecting them to wrongful prosecutions, unfair trials falling far short of international standards of fairness and arbitrary detention. Regarding unfair trials, stakeholders reported that, "[j]udgements were apparently decided beforehand, and trials commonly lasted only a few hours…defence counsel could not sincerely defend prisoners without risking harassments, expulsion from the bar and even imprisonment themselves."[1]

4. Stakeholders further reported the "Viet Nam Bar Federation and the local Bar Associations were not independent noting that if a lawyer criticizes the Communist Party or the Government, the local Bar Association can expel the member on that basis" and that lawyers representing human rights defenders or communities affected by human rights violations or criticizing human rights violations are harassed and disbarred from their bar associations.[2]

5. Canada submitted advance questions to Viet Nam including the following question: "With respect to the rulings by the Working Group on Arbitrary Detention, including on the case of Le Quoc Quan and particularly in the context of Vietnam's membership in the Human Rights Council, what are the government's timelines for addressing these opinions, in particular on whether the government will or will not release those whose detentions were found to be arbitrary by the WGAD?" Norway also asked which steps Viet Nam will take to ensure that the decisions of the Working Group on Arbitrary Detention (WGAD) are implemented.

6. The recent report[3] of the Working Group on the UPR includes recommendations by a number of UN Member States to take into account the opinions of the WGAD.[4]

7. Five examples of well-known Viet Nam lawyers who have been arbitrarily detained, are: Mr. Le Quoc Quan, Mr. Le Cong Dinh[5], Mr. Nguyen Van Dai (also known as blogger Dieu Cay), Mrs. Le Thi Cong Nhan and Mr. Cù Huy Hà Vũ[6]. The latter was released recently, on condition that he goes into exile. He fled to the United States immediately. On 8 May 2014, Nguyen Van Dai was attacked and wounded by a group of six men, when he was in

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[1] Summary prepared by the Office of the High Commissioner for Human Rights, A/HRC/WG.6/18/VNM/3, dated 4 November 2013, paragraph 32.

[2] Ibid. footnote 2, paragraph 34.

[3] Report A/HRC/26/6 GE.14-12910 dated 2 April 2014, to be discussed during the 26th session.

[4] Recommendation 143.115 by Switzerland, 143.116. by New Zealand, 143.117 by Germany and 143.118 by the United States of America, specifically recommending Viet Nam to unconditionally release all political prisoners, such as Dr. Cu Huy Ha Vu, Le Quoc Quan, Dieu Cay and Tran Huynh Duy Thuc

[5] Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012 No. 27/2012 (Viet Nam), 23 November 2012. A/HRC/WGAD/2012/27.
Mr. Le Cong Dinh's detention (as well as the detention of three bloggers) is the subject of WGAD's Opinion 27/2012: detention arbitrary, category II.

[6] Opinions adopted by the Working Group on Arbitrary Detention at its sixty-first session, 29 August–2 September 2011No. 24/2011 (Viet Nam), A/HRC/WGAD/2011/24, 28 February 2012. Mr. Cù Huy Hà Vũ's detention is the subject of WGAD's Opinion 24/2011: detention arbitrary, category II.

a bar with some colleagues and students. These men are believed to be plainclothes policemen. Viet Nam has not effectively investigated this attack.

Viet Nam does not comply with WGAD opinions

8. A recent example of how Viet Nam has not complied with WGAD opinions is the case of human rights defender Le Quoc Quan. He has been detained since December 2012. On 2 October 2013, he was convicted for charges of tax evasion. He was sentenced to 30 months in prison and a fine of 59,000 USD. L4L and LRWC and a coalition of other international NGOs raised his situation with the Special Rapporteurs of the United Nations and with the WGAD.

9. In an opinion released 12 November 2013, the WGAD determined that the deprivation of liberty of Le Quoc Quan is arbitrary,[7] being in contravention of the fair trial rights and rights to counsel guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).[8] and falling within category III. The WGAD further stated their belief "that the profile of Mr. Quan is dominated by his work as a lawyer and as a human rights defender. His current detention might be the result of his peaceful exercise of the rights and freedoms guaranteed under international human rights law". The WGAD requested Viet Nam to ensure that Mr. Le Quoc Quan be immediately released or tried before "an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the ICCPR.", and that reparation be made to him for his arbitrary detention.

10. Despite the clear wording of the WGAD Opinion, and Mr. Le Quoc Quan being on a hunger strike for more than two weeks prior to his appeal on 18 February 2014 the Hanoi Appeal Court upheld the initial decision. Thus, Viet Nam explicitly showed its unwillingness to comply with WGAD opinions.

11. Viet Nam has also failed to comply with WGAD opinions in the case of labour activists Ms Do Thi Minh Hanh, Mr. Doan Huy Chuong and Mr. Nguyen Hoang Quoc Hung, who are still imprisoned despite the WGAD request that they should be released. The WGAD concluded that the three labour rights advocates were arbitrarily detained under Category II as having been deprived of liberty solely for exercising protected right to association and to take part in the conduct of public affairs, and under Category III as having been denied rights to legal representation and therefore to fair trials. The WGAD recommended that the three be released and provided with compensation. [9]

Conclusion

12. As a member of the HRC since November 2013 and a state party to the ICCPR, Viet Nam must comply with the ICCPR other international law standards and principles.

13. The WGAD investigated the detention of human rights lawyers by Viet Nam on many occasions recently. In recent years (in 2011, 2012 and in 2013) the WGAD found detentions arbitrary and called for immediate release of the detained human rights lawyers. It is sad to note Viet Nam's history of arbitrarily detaining human rights defenders. And it is equally sad to note Viet Nam's history of not complying with WGAD opinions.

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[7] Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013, No. 33/2013 (Viet Nam), 12 November 2013, A/HRC/WGAD/2013/.

[8] Viet Nam acceded to the ICCPR 24 September 1982.

[9] Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012 No. 42/2012 (Viet Nam), 20 February 2013, A/HRC/WGAD/2012/42, paras 27 to 35.

14. Viet Nam continues to arbitrarily detain human rights defenders. Viet Nam does not comply with the opinions of the WGAD, a body of the United Nations. In view of the current UPR-process, and in view of Viet Nam being a member of the HRC, this is unacceptable.

Recommendations

15. We respectfully submit to the HRC the following recommendations.

The HRC should take measures to ensure that:

a. the pledge of Viet Nam to promote universal respect for human rights and fundamental freedoms is achieved, including full compliance with the ICCPR and the United Nations Basic Principles on the Role of Lawyers;
b. Viet Nam fully and immediately complies with all WGAD opinions;
c. Viet Nam provides annual reports to the HRC regarding its improvement in human rights including deliverables, measurable benchmarks, and concrete evidence as inspected and approved by the UN Office of High Commissioner for Human Rights;
d. Viet Nam allows the HRC Special Rapporteurs and Member States' Human Rights Delegations unrestricted access in their work;
e. Viet Nam reforms laws, policy and practice in order to ensure that crimes, harassment and other human rights violations against human rights defenders and lawyers, are effectively investigated and that suspected perpetrators identified by investigation are prosecuted and tried before independent and impartial tribunals;
f. Viet Nam reviews and commutes the sentences of Mr. Nguyen Van Dai, Mr. Le Cong Dinh and Mr. Le Quoc Quan and ensures their immediate release from prison and from house arrest, and re-instates their law practice certificates;
g. Viet Nam reviews the order that Mr. Cù Huy Hà Vũ must go into exile; and
h. Viet Nam re-instates Mr. Huynh Van Dong's and Mrs. Le Thi Cong Nhan's law practice certificate and prevents their further wrongful arrests and harassment.